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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,376	04/01/2004	Amis Pone	0061-011	8258
40972 7590 07/13/2007 HENNEMAN & ASSOCIATES, PLC 714 W. MICHIGAN AVENUE THREE RIVERS, MI 49093			EXAMINER JACKSON, BRANDON LEE	
			ART UNIT 3772	PAPER NUMBER
			MAIL DATE 07/13/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/815,376

Applicant(s)

PONE ET AL.

Examiner

Brandon Jackson

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to amendments/arguments filed 5/11/2007. Currently, claims 1-42 are pending in the instant application.

Response to Arguments

Applicant's arguments filed 5/11/2007 have been fully considered but they are not persuasive. Applicant argues the Bastow device does not exert a biasing force when the foot is not in motion. However, Bastow discloses in Column 7, Lines 46-54 that the fluid cylinders are resistant to motion of the cylinder and the piston. The resistance ranges from 1 pound to 50 pounds. If the device requires 1 pound to 50 pounds of force to compress the cylinder, then that cylinder must be outputting slightly less than the amount of force in order to resist motion. Therefore, the cylinder would push the foot engagement away from the piston that is pushing the lower leg engagement. Also, Bastow teaches the device to be used in a brace for isolating, or keeping separate, the ankle isolated and resisting the proper muscles (col. 8, lines 19-29); this shows the device biasing.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 7-31, 33-36, and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Bastow (U.S. Patent 5,215,508). Bastow discloses an ankle rehabilitation device (fig. 1), comprising a lower leg engaging apparatus (12, 13), foot engaging apparatus (1, 15), and a biasing member (7/9, 6/8), that can be pneumatic (col. 7, lines 48-49), disposed between the lower leg engaging apparatus (12, 13) and foot engaging apparatus (1, 15). The foot engaging apparatus (1, 15) has a receiving portion (2, 3) to accept the biasing member (7/9, 6/8). The receiving portion (2, 3) includes a channel (col. 6, lines 25-28) formed in the top portion of the foot engaging apparatus (1, 15). The term "channel" has been given its broadest, most reasonable interpretation, which is a groove or means of access. The receiving portion (2, 3) is substantially rigid (col. 6, lines 37-44). The foot engaging apparatus (1, 15) comprises an arched first surface (15) that abuts the dorsal portion of a foot (fig. 1), and an arched second surface (1) that abuts a heel (fig. 2). The first (15) and second (1) surface makes up the first (15) and second (1) portions, respectively, and is flexibly coupled together (col. 6, lines 51-57). The foot engaging apparatus (1, 15) is fastened to the foot by a hook and loop securing device (col. 6, lines 57-61) on the first portion (15). The leg engaging apparatus (12, 13) has a receiving portion (10, 11) to accept the biasing member (7/9, 6/8), and is formed in the top portion of the leg engaging apparatus (12, 13). The receiving portion is rigid (col. 1, lines 1-2). The receiving portion (10, 11) is flared to contain the top portion of the biasing member (7/9, 6/8). The leg engaging apparatus (12, 13) is tapered and contoured to conform to a human leg (fig. 1). The leg engaging apparatus (12, 13) is sectioned to allow application and

Art Unit: 3772

removal and are flexibly coupled together by nylon straps (14). The two sections (12, 13) are coupled together by a hinge (col. 7, lines 35-38) and are fashioned to be securely tightened around a leg by hook and loop fasteners (col. 7, lines 32-35). The leg engaging apparatus (12, 13) comprises a semi rigid elastic wrap (col. 7, lines 37-38). The term "elastic" has been given its broadest, most reasonable interpretation, which is resilient. The ankle rehabilitation device exerts force to separate the ankle joint (col. 5, lines 7-15). The foot engaging apparatus defines a seat (4,5) to accept a bottom portion of the biasing member (7/9, 6/8) and the leg engaging apparatus defines a seat (10, 11) to accept the top portion of the biasing member (7/9, 6/8).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3-6, 32, and 37-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bastow (U.S. Patent 5,215,508) in view of applicant's specification. Bastow substantially discloses the claimed invention; see claim 1 and 31 rejections above, however Bastow fails to disclose an inflatable tube that functions as a biasing member coupled with an air pump to provide compressed air. It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the hydraulic biasing member of Bastow for the inflatable tube and air pump of applicant's invention, since applicant has not disclosed that this inflatable tube and air pump provide and critical and/or unexpected results and it appears that the invention would perform equally well with any biasing member and actuator such as the hydraulic system taught by Bastow. Applicant has disclosed the use of hydraulic biasing means or an inflatable tube as equivalent on page 5, lines 20-26 of applicant's specification.

Bastow teaches all the elements of the claimed invention; therefore the method steps would be obvious to one of ordinary skill in the art at the time of the invention because they would have resulted from the use of the Bastow device.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

Art Unit: 3772

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brandon Jackson whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Patricia Bianco
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7/9/07

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Examiner
Art Unit 3772

Application/Control Number: 10/815,376

Page 7

Art Unit: 3772

BLJ